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British Columbia

1985

Report on

The Authority of a Guardian

LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

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LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON THE AUTHORITY OF A GUARDIAN

LRC 78

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The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

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To the Honourable Brian R. D. Smith, Q.C.,
Attorney General of the Province of British Columbia:

The Law Reform Commission of British Columbia has the honour to present the following:

REPORT ON
THE AUTHORITY OF A GUARDIAN

Section 25 of the *Family Relations Act* defines the powers and duties of a guardian by reference to the provisions of the English *Tenures Abolition Act, 1660*. The Commission recommends that legislation be enacted to provide a modern restatement of a guardian's authority.

A. Section 25 of the Family Relations Act

Under the British Columbia *Family Relations Act*[1] parents are joint guardians of their children. When parents are unable or unfit to care for a child, someone else must serve in their place. A non-parental guardian may be appointed by will or by order of the court[2] as a substitute for the parents.

There are two kinds of guardianship. Someone may be guardian of the person of the child or guardian of the estate of the child.[3] Usually, the same person acts as guardian of both the person and the estate of the child.

The *Family Relations Act* provides in some detail rules governing the appointment of a guardian. Curiously, the Act pays little attention to the incidents of guardianship. What rights, duties and powers does a guardian possess? Only section 25 of the *Family Relations Act* provides any guidance:

> **Authority of Guardian**
>
> **25.** (1) A guardian is both guardian of the person of the child and guardian of the estate of the child.
>
> (2) Subject to this Act, a guardian of the estate of a child has all powers over the estate of a child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12, Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 27, section 4.
>
> (3) Subject to this Act, a guardian of the person of a child has all powers over the person of the child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12 Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 27, section 4.

The date for determining the authority of a guardian, May 19, 1917, refers not to some time when a state of perfection in the governing law had been achieved. It is the date royal assent was given to section 25's predecessor, section 3 of the British Columbia *Equal Guardianship of Infants Act*.[4]

Reference to section 4 of Act 49 and 50 Victoria, chapter 27 (the English *Guardianship of Infants Act, 1886*) does not significantly further an appreciation of the powers of guardians. That section merely continued the provisions of Act 12, Charles the Second, chapter 24 (the *Tenures Abolition Act, 1660*):

> 4. Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be), of an infant as any guardian appointed by will or otherwise now has in England under the Act twelve Charles the Second, chapter twentyfour, or in Ireland under the Act of the Irish Parliament fourteen and fifteen Charles the Second, chapter nineteen, or otherwise.

The *Tenures Abolition Act, 1660* itself provides some guidance on the authority that may be exercised by a guardian:

> 8. . . . where any person hath or shall have any child or children under the age of twenty-one years and not married at the time of his death, it shall and may be lawful to and for the father of such child or children, whether born at the time of the decease of the father or at the time *en ventre sa mere*, or whether such father be within the age of twenty-one years or of full age, by deed executed in his lifetime or by his last will and testament in writing in the presence of two or more credible witnesses, in such manner and from time to time as he shall respectively think fit, to dispose of the custody and tuition of such child or children for and during such time as he or they shall respectively remain under the age of twenty-one years or any lesser time to any person or persons in possession or remainder other than Popish recusants; and that such disposition of the custody of such child or children shall be good and effectual against all and every person or persons claiming the

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[1] R.S.B.C. 1979, c. 121, s. 27.
[2] *Family Relations Act*, *supra*, n. 1, s. 30.
[3] *Ibid.* s. 25.
[4] S.B.C. 1917, c. 27.

> custody or tuition of such child or children as guardian in socage or otherwise; and that such person or persons to whom the custody of such child or children hath been or shall be so disposed or devised as aforesaid shall and may maintain an action of ravishment of ward or trespass against any person or persons which shall wrongfully take away or detain such child or children for the recovery of such child or children; and shall and may recover damages for the same in the said action for the use and benefit of such child or children.
>
> 9. . . . that such person or persons, to whom the custody of such child or children hath been or shall be so disposed or devised, shall and may take into his or their custody, to the use of such child or children, the profits of all land, tenements and hereditaments of such child or children; and also the custody, tuition and management of the goods, chattels and personal estate of such child or children till their respective age of twenty-one years, or any lesser time, according to such disposition aforesaid, and may bring such action or actions in relation thereunto as by law a guardian in common socage might do.

The legislative formula adopted in the *Family Relations Act* to govern guardianship is needlessly confusing. Few guardians have a copy of the *Tenures Abolition Act, 1660* readily to hand.

CHAPTER II AUTHORITY OF A PARENT OR GUARDIAN

A. Guardianship of the Person of a Child

The *Tenures Abolition Act, 1660* provided that a guardian had the responsibility to educate his ward and could maintain an action of ravishment or trespass for interference with the child. In *Report on Intentional Interference With Domestic Relations* (LRC 68), the Commission recommended that the actions of enticement, harbouring and seduction of a child be abolished. It was the Commission's conclusion that it was inappropriate to award damages to the child's parents for the loss of the child's services (the basis of these actions) and that the policy of deterrence was already well served by the criminal law. This aspect of a guardian's authority consequently will have no contemporary importance when the Commission's recommendations are implemented. The importance of the *Tenures Abolition Act, 1660* lies in its provision for the management and use of a child's property or profits from such property.

In British Columbia, apart from the provisions of the *Tenures Abolition Act, 1660*, particular rights and duties of guardians have been left mainly to the common law for definition; no provincial statute has codified them. Blackstone identified three principal duties a parent or guardian owed to a child: maintenance, protection and education; and three powers parents or guardians may exercise: correction, consent to marriage and (for the parent only) delegation of parental authority.[1]

Historically, distinctions have been drawn between the authority that a father, mother or guardian may exercise. Today, a mother and father enjoy the same authority over their children. Minor differences in the authority which may be exercised by a parent or a guardian exist, but for the most part they have little contemporary significance. These distinctions were drawn by courts according to the circumstances of earlier times. For example, a guardian was under a duty to educate his ward according to the ward's expectations and rank in life.[2] A parent was under no similar duty. A distinction, consequently, exists but has it any substance? "Rank in life" has little meaning in British Columbia, where class distinctions are not usually drawn. The universality of public education has further reduced the significance of this duty.

Moreover, the court enjoys a continuing jurisdiction over children as *parens patriae*. Consequently, any controversial decision of significance is open to review.

B. Guardianship of the Estate of the Child

The powers of a guardian of property under the *Guardianship of Infants Act, 1886* have been described as follows:[3]

> It would seem that the statutory (surviving parent) or testamentary guardian of the estate of an infant has some powers which he can exercize without authorization of, approval by or accounting to a court. These appear to include the collection, by suit if necessary, of personal property of the ward which is subject to guardianship, including sums of money due under trusts which the trustees have not applied directly for the infant's benefit. He may apply so much of the income as may be needed to the support and education of the ward and is under a duty to invest and reinvest funds not so needed. It seems to be thought that the Trustee Investments Act, 1961, regulates permissible investments. There is doubt as to

[1] *See* W.G.W. White, "A Comparison of Some Parental and Guardian Rights," (1980) 3 Can. J. Fam. L. 219; Blackstone, *Commentaries*, Vol. I (Lewis ed., 1898), at 460; P.M. Bromley, *Family Law*, (4th ed. 1971), at 321.
[2] *Bromley*, *ibid.* at 328.
[3] W.F. Fratcher, "Fiduciary Administration in England," (1965) 40 N.Y.U.L. Rev. 12, at 78-79.

> his power to sell property, other than investments, without court authorization. He may not convert personal property into real, invade principal or operate an active business without court authorization, and the court's power to authorize operation of a business is doubtful. He is not entitled to compensation for his services. Such a guardian may apply to the court for advice and the court may supervise him and require him to account. If the Chancery Division makes an infant a ward of court, the powers of his statutory or testamentary guardian may be exercised only with court authorization. The court may supersede such a guardian as to the infant's property by appointing a receiver of the estate.

In British Columbia, permissible investments would be governed by the *Trustee Act*, which also entitles a testamentary or court-appointed guardian to compensation for services.[4]

Section 17 of the *Infants Act* provides that generally all contracts entered into by infants, other than contracts for necessaries, are absolutely void. A number of problems arise in the law governing infants contracts, and these were addressed by the Commission in *Report on Minors' Contracts* (LRC 26).

Consequently, by law, an infant is generally incapable of dealing with his or her property. Someone else must act on the infant's behalf. Ostensibly that is the child's parent or guardian. A guardian, however, is seldom in a position to exercise control over an infant's property.

First, a donor or testator who desires to leave personal or real property to infants may use a trust rather than a direct gift to accomplish his purpose. In this way trustees, governed by the *Trustee Act*[5] and the general law of trusts, control the property.

Second, the uncertainty of the powers of a guardian of property often prompts judicial intervention. In *Gardner* v. *Blane*,[6] for example, the court appointed a receiver of the rents and profits of an infant's real estate instead of permitting the testamentary guardians to act in that capacity:

> The statute enabled the father to give to the testamentary guardian certain powers, but the precise extent of those powers over the property of the infant was by no means certain. The testamentary guardian had no estate, and was frequently unable to act effectually without the assistance of this Court.

Other provisions in the *Infants Act*,[7] also limit a guardian's discretion. The Public Trustee may, for example, petition the Supreme Court "on behalf of infants possessed of or entitled to land in the Province, for an order to dispose of all or part of the land."[8] The court may assent to the plan if the disposition is "expedient, necessary, or proper in the interests of the infant or for his maintenance or education" or where the land is wasting. The Public Trustee may also file a caveat against land in which an infant has an interest when he has grounds to believe any disposition will prejudice the infant.[9] Money held in court for an infant may be paid out at the Public Trustee's direction for the maintenance, education or benefit of the infant.[10] The infant or any person on his behalf may challenge such a direction or a refusal to make a direction.[11]

A guardian may enter into an agreement on behalf of an infant.[12] The agreement, however, must be approved by either the Public Trustee, if the consideration for the agreement is under ten thousand dollars, or the court. If the agreement is to compromise an unliquidated claim for damages or a claim

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[4] R.S.B.C. 1979, c. 414, ss. 15-20; s. 90.
[5] *Ibid.*, s. 24.
[6] (1842) 1 Hare 381, 66 E.R. 1080.
[7] R.S.B.C. 1979, c. 196.
[8] Section 1(2).
[9] Section 7.
[10] Section 12.
[11] Section 12(3).
[12] Section 31

for damages for injury to the infant's person or property, notice of the compromise must be given to the Public Trustee in addition to obtaining his or the court's approval. Section 35 of the *Family Relations Act* is also worth noting, as it requires a guardian of the estate to give security in order to better discharge his powers, rights and duties — a feature of guardianship dating back to Roman law.[13]

The provisions of the *Land (Settled Estate) Act*[14] also govern transactions relating to an infant's real property. Section 4 of that Act provides that any land owned by an infant is deemed to be a settled estate. The *Land (Settled Estate) Act* governs leasing, encumbering and the disposition of land. There seems little point in having two distinct Acts governing essentially the same questions of law, and we are not satisfied that this aspect of the law should remain unchanged. Nevertheless, reported cases do not indicate that problems arise in this context. It is, in any event, outside of the terms of our present inquiry.

It appears that a guardian may enjoy some authority over a child's estate. The significance of the guardian's role, however, is diminished by the present reluctance to leave anything to infants directly. Moreover, legislation has restricted the authority of a guardian. The exercise of a guardian's authority is usually subject to supervision, by either the Public Trustee or the court.

[13] R.H. Helmholz, "The Roman Law of Guardianship in England, 1300 - 1600," (1978) 52 Tul. L. Rev. 223, 242.
[14] R.S.B.C. 1979, c. 215.

CHAPTER III

REFORM

A. Should Section 25 of the Family Relations Act be Revised?

The single most potent criticism that can be levelled at section 25 is that it is unhelpful. It doesn't reveal anything about the incidents of guardianship. Instead, it provides only a clue for the commencement of research. Moreover, it presents problems of interpretation. To what extent has the law respecting guardianship been modified by subsequent legislation? To what extent is it possible to modify section 25 through ancillary legislation governing trustees or infants? How appropriate is the law as it stood on May 19, 1917, based as it is on 17th century legislation. While problems concerning the law of guardianship do not often arise, there is good reason for replacing section 25 with a more modern statement.

B. Options for Reform

Some commonwealth jurisdictions — England, Australia, Ontario for example — define powers of guardians in general terms. In the United States, on the other hand, most states define powers of guardians with some precision.

An example of the general approach is Ontario's recent legislation on custody, guardianship and access.[1] A person entitled to custody enjoys "the rights and responsibilities of a parent in respect of the person of the child."[2] The rights and responsibilities of a parent are not defined. The term guardianship is limited to guardianship of property.[3] Primarily a guardian's authority is derived from section 49(4) which provides that the guardian has care and management of the infant's property. When appointing a guardian of a child's estate, the court must consider the ability of the applicant to manage the property and the merit of any plans for the property proposed by the applicant.[4]

An example of the detailed approach to defining a guardian's authority is the Texas legislation.[5] It specifically lists the powers and duties of parents,[6] and those of a guardian.[7]

1. Guardianship of the Person of a Child

It is our conclusion that detailed legislation defining the powers and duties of a guardian of the person of a child is both unnecessary and undesirable. First, practical problems concerning this aspect of the authority of guardians seldom emerge. Second, in British Columbia the lack of rigorous definition of parental powers and duties has not caused problems. The care and control of a child is usually a matter of common sense.

On balance, we prefer defining the authority of a guardian of the person of a child by a general statement of principle. Since a guardian is a substitute for a parent, there is no obvious reason why a guardian should not exercise the same authority and responsibility as a parent.

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[1] *The Children's Law Reform Act*, R.S.O. 1980, c. 68, as am. S.O. 1982, c. 20, s. 1.
[2] Subsection 20(2).
[3] Section 48.
[4] Section 50.
[5] V.A.S.T., Family Code; Probate Code. The relevant provisions are set out in Appendix A to this Report. The California legislation is also interesting. *See* Cal. Probate Code 2350-2407 and California Law Revision Commission, *Guardianship-Conservatorship Law* (1980).
[6] Family Code 12.04.
[7] The guardian is a creature of statute: *see In re Guardianship Estates of Kaufman* 429 S.W. 2d 612 (Civ. App. 1968).

Perhaps the easiest formulation is to provide that a non-parental guardian shall have all of the authority over the child enjoyed by the child's parents, except as to the ability to appoint a guardian of the child. The formulation adopted in Ontario serves as a useful model for legislation.

2. GUARDIANSHIP OF THE ESTATE OF A CHILD

The *Tenures Abolition Act, 1660* provided a guardian with limited powers over his ward's estate. He was empowered to manage the estate and to receive and hold the profits from the estate for the benefit of his ward.

An infant can own real and personal property, but his capacity to deal with them is limited by the law. For the most part, approval by the Public Trustee or the court must be obtained for any transaction relating to a child's estate, pursuant to the *Infants Act* and the *Land (Settled Estate) Act*.

Usually, infants do not have large estates, and the actions of an infant's parents or guardian on his behalf are not subject to objection. The Public Trustee or the courts will not be involved unless property of some value is concerned.

With respect to this issue, it would not be satisfactory to provide that a guardian's authority over the estate of his ward parallels that of a parent. At common law, a parent had no authority over the estate of the child.[8] The *Tenures Abolition Act, 1660* provides for the management of a ward's property by his guardian. Under the *Family Relations Act*, a parent is a guardian of his or her child and consequently enjoys the powers of a guardian over the child's estate. Providing that a guardian possesses a parent's authority would deprive both parent and guardian of any ability to manage a child's property.

Actually, the policy of the *Tenures Abolition Act, 1660*, as it applies to guardianship of the estate of the child, is still valid today. What is called for is a modern statement of that policy.

Legislation adopted in Ontario, referred to earlier, carries forward the policy of the *Tenure's Abolition Act, 1660* in contemporary language. The Ontario Act provides as follows:

> **48.** (2) A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child.

The Ontario legislation also provides that a guardian of property is under certain duties respecting the property. For example, he may be required to account for the consequences of his management in the same manner as a trustee.[9] While there may be some merit to defining the specific duties and responsibilities of a guardian of the estate of a child, the same thing is accomplished by recognizing that a guardian of the estate of a child, while not a trustee, is subject to the rules that govern trustees.[10]

C. Recommendation

It is our conclusion that sections 25(2) and (3) of the *Family Relations Act* should be repealed. A non-parental guardian of the person of a child should be regarded as a substitute for a child's parent with all of the parent's authority over the child. With respect to guardianship of the estate of a child, there is merit in retaining the current supervisory role of the court (usually at the instance of the Public Trustee). Nevertheless, there will be circumstances where the guardian should have capacity to act without court approval, primarily where small amounts of the child's money are involved. That was

[8] Halsbury, *The Laws of England*, vol. 17 (1st ed., 1911) at 117.
[9] Section 54.
[10] *See, e.g., Re Pearce; Canada Permanent Trust Co. v. Public Trustee of British Columbia*, (1984) 17 E.T.R. 123 (B.C.C.A.).

the chief significance of the *Tenures Abolition Act, 1660*. In our opinion, however, it is unnecessary to define the specific powers and duties of guardianship of a child's estate. A guardian in that case is the child's fiduciary. Section 25(3) should be replaced with a provision to the effect that a guardian of the child's estate is subject to the rules that govern trustees.

The Commission recommends that:

1. Sections 25(2) and (3) of the Family Relations Act *be repealed and replaced with legislation that embodies the following principles:*

(a) A non-parental guardian of the person of a child should have the same authority as that of a parent having care and control of a child, except the power to appoint a guardian of the child.

(b) Subject to the Infants Act, *a guardian of the estate of a child should have charge of and responsibility for the care and management of the child's estate, with all of the powers, duties and responsibilities he would have if he were a trustee, for the maintenance and education or otherwise for the benefit of the child.*

Usually, guardianship will extend to both the child's person and his estate. Sometimes, however, a parent or the court will appoint guardians to exercise these capacities separately. In the absence of any such direction, however, an appointment of guardianship should embrace both heads. That is the effect of section 25(1) of the *Family Relations Act*.

D. Acknowledgments

The subject of this Report is uncontroversial and for that reason, contrary to the Commisson's usual practice, a prior Working Paper soliciting comment was not circulated.

The Commission would like to express its appreciation to Donald Moir, a law student employed by the Commission, who was responsible for the research upon which this Report is based, and to our Counsel, Thomas G. Anderson, who prepared this Report.

ARTHUR L. CLOSE
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January 25, 1985

APPENDICES

Appendix A

TEXAS LEGISLATION ON GUARDIANSHIP

V.A.S.T., Family Code

§ 12.04. Rights, Privileges, Duties, and Powers of Parent

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;
(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;
(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;
(4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including the power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;
(5) the right to the services and earnings of the child;
(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;
(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;
(9) the right to inherit from and through the child; and
(10) any right, privilege, duty, or power existing between a parent and child by virtue of law.

§ 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights; privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child:

(1) the right to have physical possession of the child and to establish its legal domicile;
(2) the duty to care, control, protection, moral and religious training, and reasonable discipline of the child;
(3) the duty to provide the child with clothing, food, shelter, and education;
(4) the right to the services and earnings of the child;
(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;
(6) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child including, except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;
(7) the power to receive and give receipt for period payments for the support of the child and to hold or disburse these funds for the benefit of the child; and
(8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

(c) A person or authorized agency designated managing conservator of a child in an affidavit of relinquishment executed pursuant to Section 15.03 of this code shall have the rights, privileges, duties, and powers given by Section 14.04 of this code to a possessory conservator

until such time as these rights, privileges, duties, and powers are modified or terminated by court order.

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.

§ 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator

(a) A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to any limitations expressed in the decree:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to provide the child with clothing, food, and shelter, and

(3) the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child.

(b) A possessory conservator has any other right, privilege, duty, or power of a managing conservator expressly granted to the possessory conservator in the decree awarding possession of the child.

(c) A possessory conservator has the right of access to medical, dental, and educational records of the child to the same extent as the managing conservator. The custodian of records shall delete all references in the records to the place of residence of the managing conservator of the child prior to their release to the possessory conservator.

V.A.S.T., Probate Code

§ 109. Persons Qualified to Serve as Guardians

(a) Natural Guardians. If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shll be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal.

§ 229. Guardians of the Person

The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated; and, if necessary for his support, to see that he learns a trade or adopts a useful profession.

§ 230. Care of Property of Estates

(b) Estate of Wards.

(1) General Powers and Duties. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

§ 234. Exercise of Powers With and Without Court Order

(a) Powers to be Exercised Under Order of the Court. The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting authority:

(1) Purchase or exchange property;

(2) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate;

(3) Compound bad or doubtful debts due or owing to the estate;

(4) Make compromises or settlements in relation to property or claims in dispute or litigation;

(5) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction

thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claims.

(b) Powers to be Exercised Without Court Order. The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

(1) Release liens upon payment at maturity of the debt secured thereby;
(2) Vote stocks by limited or general proxy;
(3) Pay calls and assessments;
(4) Insure the estate against liability in appropriate cases;
(5) Insure property of the estate against fire, theft, and other hazards;
(6) Pay taxes, court costs, bond premiums.

Appendix B

CHILDREN'S LAW REFORM ACT
R.S.O. 1980, c. 68, as am.
S.O. 1982, c. 20, s.1

GUARDIANSHIP

Appointment of guardian

48. (1) Upon application, by a parent of a child or any other person, a court may appoint a guardian of the property of the child.

Responsibility of guardian

(2) A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child.

Parents as guardians

49. (1) As between themselves and subject to any court order or any agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians of the property of the child.

Parent and other person

(2) As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child.

More than one guardian

(3) A court may appoint more than one guardian of the property of a child.

Guardians jointly responsible

(4) Where more than one guardian is appointed of the property of a child, the guardians are jointly responsible for the care and management of the property of the child.

Criteria

50. In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the circumstances, including

(a) the ability of the applicant to manage the property of the child;

(b) the merits of any plans proposed by the applicant for the care and management of the property of the child; and

(c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.

Effect of appointment

51. The appointment of a guardian by a court under this Part has effect in all parts of Ontario.

Payment of debt due to child

52. (1) Where a person is under a duty to pay money or deliver personal property to a child and no guardian of the property of the child has been appointed, the payment of not more than $2,000 or the delivery of the personal property to a value of not more than $2,000 in a year to,

(a) the child, if the child is married;

(b) a parent with whom the child resides; or

(c) a person who has lawful custody of the child,

discharges the duty to the extent of the amount paid of the value of the personal property delivered, but the total amount paid, or total value of property delivered, under this subsection in respect of the same obligation shall not exceed $5,000.

Money payable under judgment

(2) Subsection (1) does not apply in respect of money payable under a judgment or order of a court.

Receipt for payment

(3) A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child resides or a person who has lawful custody of the child has the same validity as if a court had appointed the parent or the person as a guardian of the property of the child.

Responsibility for money or property

(4) A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian for the care and management of the money or personal property.

Accounts

53. A guardian of the property of a child may be required to account or may voluntarily pass his accounts in respect of his care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass his accounts in respect of his trusteeship.

Transfer of property to child

54. A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of eighteen years.

Management fees and expenses

55. A guardian of the property of a child is entitled to payment of a reasonable amount for his fees for and expenses of management of the property of the child.

Bond by guardian

56. (1) A court that appoints a guardian of the property of a child shall require the guardian to post a bond, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child.

Where parent appointed guardian

(2) Subsection (1) does not apply where the court appoints a parent of a child as guardian of the property of the child and the court is of the opinion that it is appropriate not to require the parent to post a bond.

Where child marries

57. Upon application by a married child, the court that appointed a guardian of the property of the child or a co-ordinate court by order shall end the guardianship for the child.

58. (1) A guardian of the property of a child may be removed by a court for the same reasons for which a trustee may be removed.

Resignation of guardian

(2) A guardian of the property of a child, with the permission of a court, may resign his office upon such conditions as the court considers appropriate.

Notice to Surrogate Clerk for Ontario

59. A notice of every application to a court for appointment of a guardian of the property of a child shall be transmitted by the registrar or clerk of the court to the Surrogate Clerk for Ontario.

DISPOSITION OF PROPERTY

Supreme Court order re property of child

60. (1) Upon application by the parent of a child or any other person, the Supreme Court by order may require or approve, or both,

(a) the disposition or encumbrance of all or part of the interest of the child in land;

(b) the sale of the interest of the child in personal property; or

(c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

Criteria

(2) An order shall be made under subsection (1) only where the Supreme Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child.

Conditions

(3) An order under subsection (1) may be made subject to such conditions as the Supreme Court considers appropriate.

Limitation

(4) The Supreme Court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.

Execution of documents

(5) The Supreme Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment.

Directions

(6) The Supreme Court by order may give such directions as it considers necessary for the carrying out of an order made under subsection (1).

Validity of documents

(7) Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was eighteen years of age or, if executed by another person in accordance with the order, as if the child had executed it and had been eighteen years of age at the time.

Liability

(8) No person incurs or shall be deemed to incur liability by making a payment in accordance with an order under clause (1)(c).

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